

NTSB Order No. EA-4021

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of November, 1993

Dockets SE-11545 and
SE-11583

pilot certificates for 30 days (as to pilot-in-command Smead) and 15 days (as to second-in-command Hahn),² based on allegations that they taxied their Westwind corporate jet across an active runway at Nashville International Airport, contrary to air traffic control (ATC) instructions to hold short of that runway, in violation of 14 C.F.R. 91.75(b) and 91.87(h)³. Only respondent Smead (hereinafter referred to as respondent) has appealed from the law judge's decision. For the reasons discussed below, we deny respondent's appeal and affirm the law judge's initial decision.

A tape recording containing aircraft communications with

² The suspension of respondent Hahn's pilot certificate was waived as a result of his timely filing of a report pursuant to the Aviation Safety Reporting Program. (Tr. 63-5.)

³ Section 91.75(b) [now recodified as § 91.123(b)] provided:

§ 91.75 Compliance with ATC clearances and instructions.

(b) Except in an emergency, no person may operate an aircraft contrary to an ATC instruction in an area in which air traffic control is exercised.

Section 91.87(h) [now recodified as § 91.129(h)] provided, in pertinent part:

§ 91.87 Operation at airports with operating control towers.

(h) **Clearances required.** No person may, at any airport with an operating control tower, operate an aircraft on a runway or taxiway, or takeoff or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

ground control reveals the following transmissions immediately after respondent's aircraft (N319BG - referred to as "Bravo Golf") landed on Runway 2 Left:

2250:54	[respondent]	Nashville Ground Westwind Three One Niner Bravo Golf off, uh, Zero Two Left to the old Avitat.
	[another aircraft]	And Nashville Ground Cessna, uh, Eight Six Zero Eight Uniform clear Two Right goin' to hangar one.
2251:05	[ground control]	Zero Eight Uniform taxi to the ramp - Nine Bravo Golf turn right there, hold short of Three One.
2251:10	[respondent]	Bravo Golf Wilco.
2251:15	[ground control]	Nine Bravo Golf cross runway Three One, make a left on [taxiway] Charlie, hold short of Two Zero Left.
2251:17	[respondent]	Bravo Golf.

(Exhibits A-2 and S-2.) After the incursion, when the ground controller informed respondent that he had been instructed to hold short of runway 20 Left, respondent replied "Bravo Golf sir [or sorry], I understood cleared to the ramp." (Id.)

Respondent, who was operating the controls and the radios at the time of the runway incursion, does not dispute that the instruction at 2251:15 was issued to his aircraft, and that he acknowledged the transmission two seconds later by transmitting his call sign. He argues, however, that the "hold short of Two Zero Left" portion of the transmission at issue was not received in his aircraft. Both he and his co-pilot (respondent Hahn) testified that they did not hear that part of the instruction.

Respondent asserted that if he had heard it he would have sought clarification of the reference to Runway 20 Left, since he did not recognize that as an active runway at the time.⁴

Respondent further asserts that the controller's failure to demand a full readback of the hold short clearance is a mitigating factor. He also asserts that the Administrator failed to prove that he crossed "Runway" 20 Left, because the area where the incursion occurred is designated on the airport diagram as a taxiway or stopway, and not a runway. Finally, respondent challenges the law judge's finding of violation as being based on unsupported speculation and conjecture.

The law judge concluded, after hearing testimony from the ground controller, an FAA inspector, and both respondents, that the hold short clearance was received by respondent's aircraft, but that it simply "didn't sink in." (Tr. 137-8.) He found that the instruction was "very clear," and that the instruction and respondent's acknowledgment were uninterrupted by transmissions from other aircraft. Respondent had argued that -- in light of the fact that the local Automatic Terminal Information Service (ATIS) frequency at that time instructed pilots to read back all runway holding instructions -- his failure to read back the "hold short of 20 Left" instruction was proof that it was not received.

However, the law judge suggested that respondent was simply not

⁴ It is clear from the testimony and the airport diagram that this runway may be referred to as either 20 Left or 2 Right, depending on which end is currently designated as the approach end. (Tr. 82; Exhibit A-4.)

in the habit of reading back such instructions, and cited respondent's abbreviated acknowledgment of the instruction to hold short of Runway 31 at 2251:10. The law judge found that a pilot who fails to read back an instruction or clearance has "assumed the risk" of having misapprehended that instruction. We agree.

The ATC tape and transcript containing the instruction and respondent's acknowledgment constitute prima facie evidence, un rebutted in this record, that the instruction was received and understood.⁵ Furthermore, because respondent acknowledged the instruction with only his call sign, the controller had no reason to believe that respondent had not received the entire instruction and thus was under no obligation to restate or confirm it.

In Administrator v. Hinkle and Foster, 5 NTSB 2423, 2426 (1987), as in this case, the crew claimed to have heard only the first part of a taxi clearance, and not the instruction to hold short of a runway, and that the controller should have required a readback of, or reaffirmed, the hold short instruction. Our discussion in that case is equally applicable here:

If, as they contend, the crew . . . heard only [the first part of the transmission] and had read back [that part of the transmission], the burden would then fall upon the controller to recognize the apparent non-receipt of the latter half of the clearance and he would therefore be required to restate the "hold short" clearance.

A pilot who elects to acknowledge a clearance without a

⁵ See Administrator v. Drawdy, NTSB Order No. EA-2994 (1989); Administrator v. Hembree, NTSB Order No. EA-2958 (1989); Administrator v. Hinkle and Foster, 5 NTSB 2423 (1987).

readback cannot be heard to complain that he did not understand the transmission or did not hear it all. More important than a pilot's defense in an enforcement action is the potential for tragedy caused by miscommunication. A short readback provides the necessary safety redundancy that would, in most cases, prevent this type of incident.

Hinkle, at 2426.

If respondent believed he had received a clearance from ground control to taxi to the ramp, safe operating practice would have been to acknowledge that clearance with, "to the ramp," followed by his call sign. We note that, even in the short time covered by the ATC tape in this case, at least two other aircraft that were cleared "to the ramp" did exactly that. (Exhibit S-2.)

The controller's reference to the runway as 20 Left, rather than 2 Right -- while perhaps not technically accurate -- in no way diminished respondent's obligation to hold short of that runway. Respondent, who at that time was a frequent user of the Nashville airport, knew that these were simply different ways of referring to the same runway, and he knew that at the time of this incident it was an active runway. (Tr. 82-3.) Indeed, respondent testified at the hearing that if he had heard the instruction to hold short of 20 Left he would have done so, noting that a pilot would have "to be suicidal to cross a runway without instruction." (Tr. 89.)

Nor, in our judgment, is respondent's violation any less serious because on the airport diagram the area of Runway 20 Left where this incursion occurred is colored gray (which indicates overruns, stopways, taxiways and parking), rather than black

(which indicates hard surface runways). The ground controller testified, and respondent does not deny, that a red sign on the taxiway which intersects 20 Left indicates to pilots that they are approaching a runway. (Tr. 46.)

Finally, we do not agree with respondent that the law judge's admitted speculation⁶ about why respondents might not have heard the hold short instruction formed the factual basis for his findings of violation. To the contrary, we believe the law judge simply meant to assure respondents that he knew their violation was inadvertent.

In sum, respondent has not established any error in the law judge's initial decision.

⁶ The law judge explained, "this may be [] hypothetical . . . [but] I imagine that this perhaps may have been a very long day, . . . [a]t that time of the year, . . . I imagine it was already dark . . . I'm just hypothesizing now as to what may have been going on that day . . . Mr. Hahn was utilizing the checklist to exercise the cleanup and turning off the taxi lights and the de-ice equipment or whatever was on . . . probably the aircraft was in a hurry to get to the ramp. And both pilots perhaps were thinking about something else." (Tr. 135.)

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 30-day suspension of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.⁷

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

⁷ For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).